

MONROE D. KIAR  
TOWN ATTORNEY  
TOWN OF DAVIE  
6191 SW 45th Street, Suite 6151A  
Davie, Florida 33314  
(954) 584-9770

TOWN ATTORNEY REPORT

DATE: October 10, 2001

FROM: Monroe D. Kiar 

RE: Litigation Update

1. **Sunrise Water Acquisition Negotiations:** The Town requested competitive proposals for providing engineering services to conduct a western area utilities study. The Bid Selection Committee met on September 12, 2001 and ranked URS as its first choice. At the Town Council Meeting of October 3, 2001, a resolution was approved selecting URS to provide engineering services for the western area utilities study and authorizing the Town Administrator to negotiate an agreement with URS for such services. The resulting contract negotiated by the Town Administrator or his designee will be presented to the Council for approval at a future meeting date.
2. **Ordonez, et al v. Town of Davie:** This matter went to trial and the jury returned a zero verdict for the Plaintiffs. The plaintiffs failed to file a timely Notice of Appeal and therefore, the jury verdict is now final. Mr. Burke has moved to tax court costs against the Plaintiffs. His motion remains pending.
3. **Sessa v. Town of Davie (Forman):** On September 6, 2001, the Town Attorney's Office forwarded to the binding mediator its Memorandum of Law concerning the Forman properties. This matter has been bifurcated pursuant to agreement of the parties and the initial issue for determination at the first mediation session was whether the Town was precluded from imposing a special road assessment upon the Forman properties as a result of a "Settlement Agreement" dated November 12, 1985, negotiated by the prior Town Attorney and a former Administration. It is the contention of the Formans that by virtue of the language contained in the Settlement Agreement in 1985 regarding annexation, the Town does not have a right to impose a special assessment for the road improvement in question. The Town Attorney's Office of course, has taken a different position, as has the prior Town Attorney. Both sides presented oral argument in support of their respective positions on this issue at the mediation session held on Tuesday, September 11, 2001. The

provision in question, Section 5.(e) of the Settlement Stipulation reads "The Defendants will provide fire and police protection together with sewer and water and other municipal services to the lands without any special assessment, surcharges or other special exactions or taxes." The position of the Town Attorney's Office is that the road in question was a capital improvement and therefore, the language in sub-provision 5.(e) of the Settlement Agreement does not provide the subject property with the perpetual exemption from special assessments from capital improvements, such as the road. The binding mediator has not yet ruled upon this issue. If the binding mediator determines that the Forman properties are subject to a special road assessment, then a second binding mediation shall be scheduled to determine whether or not the Formans' properties specifically benefitted by the work which is the subject of the disputed special assessment.

4. **Coastal Carting Ltd., Inc. v. City of Sunrise, et al:** United States District Judge Jose A. Gonzalez, Jr. dismissed this action as to the Plaintiff, Coastal Carting Ltd. only. This case will proceed as to the garbage companies allowed to intervene. At this time, the case is not being prosecuted against the municipalities, including the Town of Davie. It is Mr. Johnson's understanding that the municipalities may be brought back into the case at a later date since the Resource Recovery Board of Broward County is still alleging that the municipalities are indispensable parties.
5. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A final hearing was held before Judge Cocalis regarding the Plaintiffs' Petition for Writ of Certiorari and both sides are now awaiting the court's decision. In the meantime, the County is in negotiations with the property owner to purchase the 60 acres of commercial property in question for use as a regional park. The Town Council at its meeting of October 3, 2001, made a recommendation to the County by a 3-2 vote that the County proceed with its negotiations regarding the possible purchase of this land for use as a regional park and further, with its recommendation, requested that the property owner be required as part of any such purchase, to dismiss the instant lawsuits with prejudice, and release the Town of Davie of any and all further liability or cause of action relevant to the two lawsuits.
6. **MVP Properties, Inc.:** The United States District Judge granted the Town of Davie's Motion for Summary Judgment and entered a Final Summary Judgment in favor of the Town and against the Plaintiff, MVP Properties, Inc. MVP Properties, Inc. timely filed a Notice of Appeal seeking further review of the matter by the United States Court of Appeals for the 11<sup>th</sup> Circuit. The Appellate Brief of MVP Properties, Inc. has just been filed and the Answer Brief of the Town has been filed by Mr. Burke. The 11<sup>th</sup> Circuit Court of Appeal has selected this case for mediation under 11<sup>th</sup> Circuit Rule 33-1. It requires that a mediation be held in person on Thursday, November 1, 2001, at the Circuit Mediation Office in Miami, Florida. The purpose of the mediation is to explore possibilities for settlement of the dispute.
7. **Cummings v. Town of Davie:** The Town and the Plaintiffs entered into a Stipulation for Settlement which was filed with the court at the July 23, 2001 hearing. The attorney for

the Plaintiffs has advised the Town Attorney's Office that the Plaintiffs have begun the variance application procedure required under the terms of the Stipulation for Settlement and that this will be placed on the Planning & Zoning Board Agenda and thereafter, on the Town Council Agenda in the very near future.

8. **Town of Davie v. Malka:** The Town Attorney's Office has been in close contact with our Building Official, Mr. Sprovero. Mr. Sprovero has advised the Town Attorney's Office that the exterior of the home is now nearly complete. The exterior has been painted and the construction debris is being removed. The completion of the exterior has been the principal goal of the Code Enforcement Division, the Town Attorney's Office and the Building Department, as well as the residents in the community. The owner has applied for a permit to complete the interior of the structure.
9. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** The Florida Department of Agriculture has filed a motion seeking to tax costs of approximately \$11,000.00 against the County and the coalition of cities and the individual plaintiffs due to the 4<sup>th</sup> District Court of Appeal's reversal of Judge Fleet's Ruling in the Circuit Court case. At the October 3, 2001 Town Council Meeting, the Council was advised by the Town Attorney's Office that the County has requested each city to be prepared to contribute between \$2,500.00 and \$3,000.00 to cover the costs sought by the Department in the Circuit Court case and to cover current and future costs incurred by the County. The County anticipates that its costs will total \$30,000.00. The Town Council authorized such payment to the County, should the County not be able to recover its costs in the DOAH proceeding where the County and the coalition was successful in their challenge of the rule promulgated by the Department of Agriculture. The Town Attorney's Office has spoken with the Chief Appellate Attorney for County and has been assured that the monies authorized for payment, if needed, of \$2,500.00 to \$3,000.00 by the Davie Town Council should cover Davie's share of the anticipated costs and also, any personal liability for payment of same by the individual plaintiffs who are Davie residents.
10. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie has filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. The Motion for Summary Judgment continues to remain pending. In the meantime, the Court has removed the case from the trial docket pending its ruling on our Motion for Summary Judgment. There is a good likelihood therefore, that even if our Motion for Summary Judgment is not granted, that this lawsuit will not be heard before the end of the year, should it go to trial.
11. **Reinfeld v. Town of Davie, et al:** A Motion to Dismiss the remaining individual defendant, Mr. Weiner, was filed by the Florida League of Cities attorney, Mr. Marrero, and the Motion to Dismiss Mr. Weiner as a defendant continues to remain pending. Both sides are awaiting the court's ruling on this motion. Discovery procedures have commenced by both sides and the Plaintiff has responded to written Interrogatories

her by the Town. Further discovery is being conducted by both sides in this litigation, including the taking of depositions of various witnesses.

12. **Spur Road Property:** The Town's outside legal counsel, Mr. Burke has indicated that the Department of Transportation has agreed to award the property to the high bidder and the Town has filed with the Department its notice that it will be filing a formal protest of the Department's action. The next step, according to Mr. Burke, will be for the Town to file a formal protest and then the Department must make a ruling or send this matter to the Division of Administrative Hearings for further action.